



May 23, 2000

Mr. Miles K. Risley
Senior Assistant City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2000-2029

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 136372.

The City of Victoria (the "city") received a request for all arrest records, accident reports, and incident reports pertaining to two named individuals. You state that the city has released a municipal court summons to the requestor. You claim that the other responsive records that you have submitted are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Statutory confidentiality under section 552.101 requires express language that makes certain information confidential or provides that it shall not be released to the public. See Open Records Decision No. 478 at 2 (1987). You claim that the submitted records contain information that is confidential under section 58.007 of the Family Code. With regard to law enforcement records involving conduct that occurred on or after September 1, 1997, section 58.007 provides in relevant part:

(c) Except as provided by Subsection (d), law enforcement records and files *concerning a child* and information stored, by electronic means or otherwise,

concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c) (emphasis added). For the purposes of title 3 of the Family Code, which includes section 58.007, section 51.02 of the Family Code provides that “child” means a person who is:

(A) ten years of age or older and under 17 years of age; or

(B) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

Fam. Code § 51.02(2). We have reviewed the submitted records and marked with blue flags the information that constitutes law enforcement records or files concerning a child under section 58.007 of the Family Code. As none of the exceptions in section 58.007 appears to be applicable to any of that information, we conclude that it is confidential under section 58.007(c). Accordingly, that information is excepted from disclosure under section 552.101 of the Government Code and must be withheld in its entirety.

Section 552.101 also excepts from disclosure information that is protected by the common law right of privacy. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a governmental entity compiles or summarizes criminal history information pertaining to a particular individual, the compiled or summarized information takes on a character that implicates the individual’s right of privacy in a manner that the same information in an uncompiled state does not. *See United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Thus, when a requestor asks for all records concerning a certain individual, section 552.101 requires a law enforcement agency to withhold responsive information that treats that individual as a suspect, arrestee, or defendant, because that individual’s common law right of privacy has been implicated. *Id.*; *see also* Open Records Decision No. 616 at 2-3 (1993). We have marked with red flags the submitted information that is confidential

under section 552.101 in conjunction with the common law right of privacy. That information also must be withheld in its entirety.

In summary, a portion of the submitted information is confidential under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Another portion of the submitted information is confidential under section 552.101 in conjunction with the common law right of privacy. All of the information that is confidential under section 552.101 must be withheld. As the city has raised no other exception to disclosure, the submitted information that is not confidential under section 552.101 must be released. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

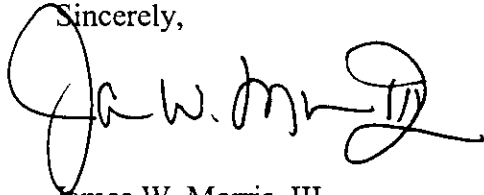
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "W" and a stylized "M" and "III".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ljp

Ref: ID# 136372

Encl. Submitted documents

cc: Mr. Mel Miller
Shawver & Associates
P.O. Box 1592
Corpus Christi, Texas 78403-1592
(w/o enclosures)